



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

HON. JOSEPH A. ZAYAS
CHIEF ADMINISTRATIVE JUDGE

HON. NORMAN ST. GEORGE
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

DAVID NOCENTI
COUNSEL

MEMORANDUM

To: All Interested Persons

From: David Nocenti

Re: Request for Public Comment on a proposal to set a monetary threshold for Commercial Division cases seeking equitable and declaratory relief

Date: September 20, 2024

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The Administrative Board of the Courts is seeking public comment on a proposal recommended by the Commercial Division Advisory Council (CDAC) to amend 22 NYCRR § 202.70 to set a monetary threshold for Commercial Division cases seeking equitable and declaratory relief.

The proposed amendment is attached as Exhibit 1.

Attached as Exhibit 2 is a memorandum from CDAC providing background on this issue and the reasons for the proposed amendment. As noted in that memorandum, the purpose of the Commercial Division is to handle complex commercial cases, and the court therefore only hears cases with a minimum monetary amount in dispute (with those minimums varying depending on the location of the court). Those monetary thresholds do not apply in cases seeking only equitable or declaratory relief, however, which means that the court can end up hearing relatively minor cases that do not seek any monetary relief.

CDAC therefore recommends that cases involving equitable and/or declaratory relief be assessed based on the “value of the object of the action,” which is how federal courts determine if such actions meet the monetary jurisdictional requirements in federal court. Four types of cases – shareholder derivative actions, commercial class actions, actions seeking corporate dissolution, and Article 75 proceedings relating to international arbitrations – would continue to be heard without the application of any monetary threshold.

Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10th Fl., New York, New York, 10004. Comments must be received no later than Friday, November 1, 2024.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT 1

Proposed Amendment

Subdivision (a) and the introductory paragraph of subdivision (b) of the Rules of the Commercial Division of the Supreme Court are amended to read as follows:

(a) Except as set forth in ~~subdivision (b)~~ paragraphs (4), (5), (11) and (12) of subdivision (b) of this section, the monetary thresholds of the Commercial Division, exclusive of punitive damages, interest, costs, disbursements and counsel fees claimed, are established as follows:

| | |
|---------------------------|-----------|
| Albany County | \$50,000 |
| Bronx County | \$75,000 |
| Eighth Judicial District | \$100,000 |
| Kings County | \$150,000 |
| Nassau County | \$200,000 |
| New York County | \$500,000 |
| Onondaga County | \$50,000 |
| Queens County | \$100,000 |
| Seventh Judicial District | \$50,000 |
| Suffolk County | \$100,000 |
| Westchester County | \$100,000 |

(b) Commercial cases

Actions in which the principal claims involve or consist of the following will be heard in the Commercial Division provided that the monetary threshold is met or, and for such actions that seek equitable or declaratory relief is sought, satisfaction of the applicable monetary threshold shall be measured by the value of the object of the action:

* * * *

EXHIBIT 2

MEMORANDUM

To: Commercial Division Advisory Council

From: Subcommittee on Procedural Rules to Promote Efficient Case Resolution
("Subcommittee")

Date: July 15, 2024

Re: Proposed Modification of Criteria for Assignment to Commercial Division

Introduction

This memorandum proposes an amendment to the jurisdictional requirements set forth in 22 N.Y.C.R.R. 202.70 (a), (b) & (c) for assignment of matters to the Commercial Division. To qualify currently for Commercial Division treatment, the case: (a) must fall under one of the specifically enumerated categories of presumptively commercial matters; (b) must *not* fall under one of the specifically enumerated categories of presumptively *non*-commercial matters; and *either* (c) (i) must satisfy the monetary threshold for the county where the case is pending the amount at issue, "exclusive of punitive damages, interest, costs, disbursements and counsel fees claimed,"; *or* (ii) may bypass the monetary threshold requirement if the case principally seeks equitable or declaratory relief. Stated differently, under the current jurisdictional requirements a presumptively commercial case principally seeking equitable or declaratory relief need not also satisfy the applicable monetary threshold.

Given the Division's characteristically extensive case management paradigm and large caseload, care must be taken to allocate its resources to maximize benefits. With this in mind, and based upon feedback from the bench and bar, the Administrative Board of the Courts has periodically revised and refined the jurisdictional requirements to ensure that only complex commercial matters receive Commercial Division treatment.

The Commercial Division Justices of New York County have suggested that a further refinement of the jurisdictional requirements is appropriate and necessary. In particular, the extant exemption to the monetary threshold requirement for cases seeking equitable and declaratory relief has enabled cases that would not otherwise qualify for Commercial Division treatment to draw disproportionately on the Division's resources. Consequently, these Justices suggest that cases seeking equitable and declaratory relief be subject to the monetary threshold applicable to virtually all other Commercial Division matters. The Commercial Division Advisory Council agrees.

Proposal and Discussion

22 N.Y.C.R.R. 202.70 (a) & (b) should be amended as follows:

“(a) Except as set forth in subdivisions (b)(4), (5), (11) & (12), the monetary thresholds of the Commercial Division, exclusive of punitive damages, interest, costs, disbursements and counsel fees claimed, are established as follows:

| | |
|---------------------------|-----------|
| Albany County | \$50,000 |
| Bronx County | \$75,000 |
| Eighth Judicial District | \$100,000 |
| Kings County | \$150,000 |
| Nassau County | \$200,000 |
| New York County | \$500,000 |
| Onondaga County | \$50,000 |
| Queens County | \$100,000 |
| Seventh Judicial District | \$50,000 |

| | |
|--------------------|-----------|
| Suffolk County | \$100,000 |
| Westchester County | \$100,000 |

(b) Commercial cases

Actions in which the principal claims involve or consist of the following will be heard in the Commercial Division provided that the monetary threshold is met, and for such actions that seek equitable or declaratory relief, satisfaction of the applicable monetary threshold shall be measured by the value of the object of the action.”

Discussion

The purpose of the Commercial Division is to preside over complex commercial matters, and the jurisdictional requirements set forth in the Commercial Division Rules are designed to ensure that the Division’s resources are allocated accordingly. The goals of the proposed amendments are twofold:

First, they refine the jurisdictional requirements so as to utilize the monetary threshold criterion for cases seeking equitable and declaratory relief. While the value of a case is not always synonymous with its level of complexity, the monetary thresholds serve as appropriate (if imperfect) proxies for complexity, and they are already an established criterion for assignment to the Division. Moreover, since the value of a case seeking equitable or declaratory relief may not be readily apparent by simply looking to the *ad damnum* clause of a complaint seeking money damages, the proposed amendment directs that value be assessed by looking to the “value of the object of the action.”

The phrase “value of the object of the action” is a term of art drawn from federal practice; it is utilized to assess whether a claim for equitable or declaratory relief satisfies the monetary

threshold for diversity jurisdiction under 28 U.S.C. § 1332(a). *See, e.g. Hunt v Washington State Apple Adv. Com'n*, 432 US 333, 347 [1977]). *Hunt* and its progeny should provide practitioners and the courts with a well-developed body of case law about the methodology used to assess the litigation's monetary value in this context.

Second, the proposed amendments explicitly leave in place the monetary threshold exemption for a discrete number of enumerated "commercial cases" -- *i.e.*, (b)(4)(shareholder derivative actions), (b)(5) (commercial class actions), (b)(11)(actions seeking corporate dissolution) and (b)(12)(proceedings under Article 75 relating to international arbitrations). As to these, the Administrative Board of the Courts has independently (and explicitly) found them to merit Commercial Division treatment without regard to the amounts at issue.

Conclusion

The purpose of the proposed amendment is to reduce in number those cases that would currently qualify for Commercial Division treatment but that do not necessarily justify the expenditure of the Division's resources. The Council believes that based upon the New York County Justices' "boots on the ground" experience, the proposed amendment will do just that, enabling the Division to continue to preside over complex and resource intensive litigations.